

THE UNIVERSITY OF CHICAGO

In the case *sub judice*, Duramax presents arguments and authority that should have been, but were not, presented in its motion (*e.g.*, in its Reply Brief, Duramax presents for the first time arguments and evidence regarding the *Morton-Norwich* elements of functionality and whether Fernstrum's mark is a stylized drawing or an accurate portrayal of its product). As a result, Duramax has, in effect, submitted a 34 page brief supporting its motion, rather than the 25 pages permitted under Board practice. Trademark Rule 2.127(a). Fernstrum is thereby

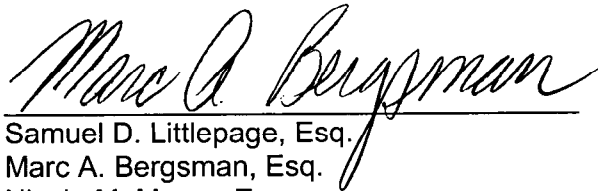
09/10/2003TTAB  
09/10/2003TTAB

prejudiced by the actions of Duramax because Fernstrum could not address all of the arguments and authority asserted by Duramax.

In this case, equity and fairness demands that the Duramax Reply Brief be stricken.

**R. W. FERNSTRUM & CO.**

Date: September 4, 2003



Samuel D. Littlepage, Esq.  
Marc A. Bergsman, Esq.  
Nicole M. Meyer, Esq.  
Dickinson Wright PLLC  
1901 L Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 659 – 6944  
MBergsman@dickinsonwright.com

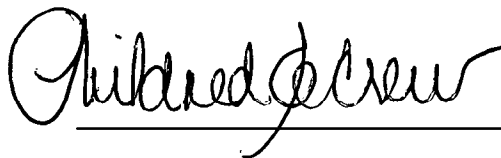
Attorneys For Applicant

09/10/2003TTAB  
09/10/2003TTAB

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of September, 2003, a true and correct copy of the foregoing ***APPLICANT'S OBJECTION TO OPPOSER'S REPLY BRIEF*** was served via certified U.S. mail, return receipt requested, on:

D. Peter Hochberg, Esquire  
**D. Peter Hochberg Co., L.P.A.**  
The Baker Building  
Sixth Floor  
1940 East Sixth Street  
Cleveland, Ohio 44114

  
\_\_\_\_\_

DC 71119-37 87404